IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7524 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SERGEANT S K SINGH

Versus

STATION COMMANDER GROUP CAPTAIN & ORS.

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Appearance:

1. Special Civil Application No. 7524 of 1990

MR MB GANDHI for the Petitioner

MS PJ DAVAWALA for Respondents Nos. 1-3

MR KETAN A.DAVE, ADDITIONAL CENTRAL GOVT. STANDING COUNSEL for Respondent No. 4

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 29/11/2004

ORAL JUDGEMENT

The petitioner, a Sergeant in the Air Force had preferred the present petition under Article 226 of the Constitution of India and had challenged the order dated 11th September, 1990 made by the Wing Commander (C Adm O) directing the petitioner to vacate the residential quarter immediately on disciplinary ground. Pending this petition he was removed from service by order dated 17th January, 1991 made by the Wing Commander, Commanding Officer. The said order of removal from service has also been challenged in the present petition.

The petitioner was alleged to have seduced one Sarojkumari, a minor daughter of 15 years of age of Sergeant Manjhi and of having sexual intercourse with her. A notice was issued on 25th October, 1990 informing the petitioner that he had conducted himself in an unbecoming manner and to show-cause why he should not be removed from service in accordance with Rule 18 of the Air Force Rules, 1969 (hereinafter referred to as "the Rules"). The said notice was not answered by the petitioner. At personal hearing he admitted his guilt. In view of the said admission and the other evidence collected by the disciplinary authority, the petitioner came to be removed from service by the aforesaid order dated 17th January, 1991.

Learned advocate Mr.Gandhi has appeared for the petitioner and has submitted that the impugned order has been made in gross violation of the principle of natural justice and the statutory provisions. He has submitted that no semblance of enquiry was held against the petitioner. Nor the petitioner was given opportunity to meet the evidence collected by the disciplinary authority. Nor the petitioner was given opportunity of defence. He has relied upon Sections 71 and 72 of the Air Force Act, 1950 (hereinafter referred to as "the Act"). He has submitted that the offence allegedly committed by the petitioner constitutes a civil offence within the meaning of clause (xii) of Section 4 of the Act. It was, therefore, imperative for the disciplinary authority to hold court martial as envisaged by Section 71 of the Act. He has also relied upon Rule 18 of the Rules. He has submitted that statutory requirement under the said Rule 18 has also been not complied with. In absence of a court martial or a regular disciplinary procedure or an opportunity of defence the petitioner could not have been removed from service. The impugned order, therefore, deserves to be set aside.

Clause (xii) of Section 4 of the Act defines "civil offence" to mean an offence which is triable by a criminal court. Section 71 of the Act provides, inter alia, that if any person subject to the Act commits any civil offence, shall be deemed to be guilty of offence against the Act and shall be liable to be tried by a court martial. Section 72, inter alia, enumerates the offences for commission of which such person shall not be deemed to be guilty of offence against the Act and shall not be tried by a court martial. Section 20 of the Act empowers the Chief of Air Staff and other officers to dismiss or remove from the service any person subject to the Act. Rule 18 of the Rules provides, inter alia, that no person shall be dismissed or removed under sub section (1) or sub section (3) of Section 20 unless he has been informed of the particulars of the cause of action against him and allowed reasonable time to state in writing any reasons he may have to urge against his dismissal or removal from the service.

I am unable to agree with Mr.Gandhi that the petitioner having been alleged to have committed a civil offence he was required to be tried by a court martial. Section 71 of the Act provides for the cases in which a person subject to the Act can be tried by a court martial. However, there shall not be compulsion upon the authority to try such person by a court martial in every case. Section 72 of the Act is an exception to Section 71 i.e. the cases where such person cannot be tried by a court martial. The aforesaid provisions relating to the court martial do not deprive the disciplinary authority of its power to take disciplinary action against such person. Rule 18 of the Rules requires that such person shall be informed about the cause of action and an opportunity to make his statement against the proposed dismissal or removal from service. Elaborate disciplinary proceeding as is required to be held in respect of the civil servants is not envisaged in respect of the person subject to the Act. In the present case, indisputably the petitioner was given a notice informing the particulars of the cause of action against him and was allowed to give his statement in writing. In my view, therefore, the principles of natural justice can be said to have been complied with. No statutory provision can be said to have been infringed.

Learned advocate Mr.Gandhi has relied upon the

judgment of this Court in the matter of Shantibhai Ambalal Patel v/s. Dholka Nagarpalika (Special Civil Application No.8913/1999 decided on 14th October, 2003 Coram: H.K.Rathod, J.). He has submitted that the learned Judge has extensively dealt with how a disciplinary proceeding shall be conducted and the nature of opportunity required to be given to the delinquent servant.

Be it noted that the said matter was in respect of a civil servant. Rules of disciplinary proceeding applicable to a civil servant do not apply to the person subject to the Act. The said judgment, therefore, shall have no applicability to the present case.

Mr.Gandhi has also produced copy of the set of evidence relied upon by the disciplinary authority and furnished to the learned advocate Mr.Gandhi by the learned counsel. I have perused the set of evidence produced by Mr.Gandhi. The said evidence discloses that there was sufficient materials before the disciplinary authority to hold the petitioner guilty. The petitioner also had appeared before the disciplinary authority and had given a statement admitting his guilt. The petitioner did conduct himself in an unbecoming manner contrary to the norms of descent behaviour in the society. Such a person could not have been continued in service. The petitioner has rightly been removed from service after giving him due opportunity of defence. No case for interference is made out.

In view of the above discussion the petition is dismissed with cost. Rule is discharged.

( Ms. R.M.Doshit, J. )
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